IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

WP(C).No. 25638 of 2006(B)

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AGAINST THE ORDER IN CC 504 2001 IN
CC.503/2001 of ADDL.C.J.M., ERNAKULAM

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PETITIONER:

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L.A.XAVIER D'CRUZ, THE CHAIRMAN,
M/A.LEANS PVT.LTD., ETHALEEN HOUSE,
T.C.NO.44613, VALIYATHARA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.BABU KUMAR

RESPONDENTS:

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1. CAPT.MAJOR CHACKO, `SAKURA',
(UPSTAIRS), ERNAKULAM, KADAVANTHRA,
COCHIN-20.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB
ADV. SRI.B.KRISHNA MANI
SRI.T.D.ROBIN
SRI.P.LEAN JOSE
SRI.R.ANUP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE COMPLAINT IN CC.NO.503/01 PENDING BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT DATED NIL.

EXT.P2: TRUE COPY OF THE COMPLAINT IN C.C.NO.504/01 PENDING BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT DATED 5.9.94.

EXT.P3: TRUE COPY OF THE EXEMPTION PETITION FILED BY THE PETITIONER BEFORE THE ACJM, ERNAKULAM DT.4.6.05.

EXT.P4: TRUE COPY OF THE EXEMPTION PETITION FILED BY THE PETITIONER BEFORE THE ACJM, ERNAKULAM DT.4.6.05.

EXT.P5: TRUE COPY OF THE MEMO ISSUED BY THE COUNSEL FOR THE COMPLAINANT DATED 16.03.2006.

EXT.P6: TRUE PHOTOCOPY OF THE DEMAND DRAFT IN THE NAME OF 1ST RESPONDENT DATED 27.6.2006.

EXT.P7: TRUE COPY OF THE JUDGMENT IN W.P(C) NO.20156/06 OF HON'BLE HIGH COURT OF KERALA DATED 24.08.2006.

EXT.P8: TRUE PHOTOCOPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE MAGISTRATE COURT, ERNAKULAM DT.8.9.06.

EXT.P9: TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE MAGISTRATE COURT, ERNAKULAM DT.8.9.06.

EXT.P10:TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY Dr.S.SIVAPRASAD TO THE PETITIONER DATED 20.09.06.

EXT.P11:TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE MAGISTRATE COURT, ERNAKULAM DT.22.9.06.

EXT.P12:TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE MAGISTRATE COURT DT.22.9.06.

EXT.P13:TRUE COPY OF THE BANK DRAFT DT.19.8.06.

EXT.P14: TRUE COPY OF THE BANK DRAFT DT.20.09.06.

/TRUE COPY/

**R.BASANT, J.**

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**W.P.C.NO.25638 OF 2006**

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Dated this the 8th day of December, 2006.

**JUDGMENT**

The petitioner is the accused in a prosecution under Section 138 of the N.I Act. The trial in the case has made much head way. The accused has already been examined under Section 313 Cr.P.C. The matter stands posted for defence evidence. At that stage, consequent to non appearance of the petitioner, a non bailable warrant was issued against the petitioner. The petitioner came to this Court with Writ Petition No.20156 of 2006 and another Bench of this Court by Ext.P7 order directed the petitioner to surrender before court within 2 weeks. The non bailable warrant should not be executed in the meantime, it was directed. The learned Judge further observed that no pretrial detention is required in the matter. The learned Judge by way of abundant caution further observed that the petitioner may apply for exemption which shall be considered favourably by the court below, a copy of that order is produced as Ext.P7.

2. According to the petitioner, when he appeared before the court below, the learned Magistrate of that court was on

leave. His request for bail and exemption was taken up by the learned Magistrate in-charge. The petitioner was enlarged on bail by that Magistrate in-charge. The application for exemption was received. But no orders were passed as the Magistrate in-charge felt that the regular Magistrate must pass orders on that.

3. On the next date when the matter came up for hearing, the petitioner was absent; his counsel was present. The application for exemption was not disposed of. But a non bailable warrant was issued against the petitioner on the ground that he was absent.

4. The petitioner, in these circumstances, has come back to this Court again seeking directions. The learned counsel for the petitioner submits that the petitioner apprehends that if he surrenders before the learned Magistrate, he may be remanded to custody. The learned counsel for the petitioner submits that observation to that effect were made in court also by the learned Magistrate. In these circumstances, it is prayed that direction under Section 482 Cr.P.C may be issued to ensure that the petitioner is not kept in custody pending disposal of the case, which has already reached the stage of defence evidence. The learned counsel for the petitioner further submits that the entire

cheque amount has already been paid, but the matter is not compounded and composition has not been reported to the learned Magistrate on account of some surviving minor disputes.

5. Having considered all the relevant inputs, I am satisfied that a direction can be issued to the learned Magistrate not to execute the non bailable warrant issued against the petitioner. Personal presence of the petitioner need not be insisted as such presence does not appear to be necessary in a case which has reached the stage of defence evidence. The learned Magistrate shall expeditiously dispose of the case. On the new date of posting, the defence witnesses, if any, shall be produced before the learned Magistrate by the petitioner.

6. This Writ Petition is, in these circumstances, allowed to the above extent.

**R.BASANT**
**JUDGE**

rtr/